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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[CG Docket No. 11-175; FCC 11-159]

Anglers for Christ Ministries, Inc., New Beginning Ministries; Petitioners; Interpretation of Economically Burdensome Standard

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to continue utilizing the factors used for the “undue burden” exemption standard when evaluating future petitions seeking individual exemptions under the new economically burdensome standard contained in the CVAA. In addition, the Commission proposes to replace all current references to “undue burden” in the Commission’s closed captioning rules with the term “economically burdensome” to correspond with the new language reflected in the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). The intended effect of this action is to ensure that the Commission’s rules conform to section 202 of the CVAA.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by [CG Docket No. 11-175], by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission’s Electronic Comment Filing System (ECFS), through the Commission’s Web site <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket No. 11-175.
- **Paper filers:** Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-

class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, or via email to fcc@bcpiweb.com.

FOR FURTHER INFORMATION CONTACT: Traci Randolph, Consumer and Governmental Affairs Bureau at (202) 418-0569, or e-mail: Traci.Randolph@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking (NPRM), document FCC 11-159, adopted October 20, 2011, and released October 20, 2011, in CG Docket No. 11-175, seeking comment on (1) continuing to utilize the factors used for the "undue burden" exemption standard contained in section 713(e) of the Act and codified in § 79.1(f)(2) of the Commission's rules, when evaluating future petitions seeking individual exemptions under the new economically burdensome standard contained in the CVAA and (2) replacing all current references to "undue burden" in section 79.1(f) of the rules with the term "economically burdensome" to correspond with the new language reflected in the CVAA. Simultaneously, with the NPRM, the Commission also issued a Memorandum Opinion and Order (MO&O) and Order in CG Docket No. 06-181. The full text of FCC 11-159 and copies of any subsequently filed documents in this matter will be available for public

inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. FCC 11-159 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW, Room CY-B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its web site, www.bcpiweb.com, or by calling 1-800-378-3160. FCC 11-159 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro/trs.caption>.

Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments and reply comments must include a short and concise summary of the substantive discussion and questions raised in the document FCC 11-159. The Commission further directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments must otherwise comply with 47 CFR 1.48 and all other applicable sections of the Commission's rules.

Pursuant to 47 CFR 1.1200 et. seq., this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte

meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

Document FCC 11-159 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, see 44 U.S.C. 3506(c)(4).

SYNOPSIS

1. In document FCC 11-159, the Commission proposes to continue utilizing the factors used for the “undue burden” exemption standard contained in section 713(e) of the Act and codified in § 79.1(f)(2) of the Commission's rules, when evaluating future petitions seeking individual exemptions under the new economically burdensome standard contained in the CVAA. The Commission tentatively concludes that Congress intended no substantive change in these factors and that, notwithstanding the change in nomenclature from an “undue burden” to an “economically burdensome” standard, Congress intended for the Commission to continue using the undue burden factors. The Commission seeks comment on this tentative conclusion. The Commission also seek comment on any other interpretations of the term

“economically burdensome” that the Commission should consider in evaluating requests for individual exemptions from the closed captioning requirements.

2. At present, the Commission’s rules, at § 79.1(f), contain various references to the prior undue burden standard. The Commission proposes to replace all current references to “undue burden” in §79.1(f) of its rules with the term “economically burdensome” to correspond with the new language reflected in the CVAA and to make clear that petitioners seeking individual exemptions from the captioning rules must now show that providing captions on their programming would be “economically burdensome.” The Commission seeks comment on this proposed action.

INITIAL REGULATORY FLEXIBILITY CERTIFICATION

3. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 5 U.S.C. 601(3). A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

4. In document FCC 11-159, the Commission proposes to revise the references to “undue burden” contained in § 79.1(f) of its rules – “Procedures for exemptions based on undue burden” - to “economically burdensome” as required by the. No substantive changes to the existing rule beyond this change in terminology are proposed. Since the change is only a change in terminology, there is no burden of compliance on regulated entities subject to these rules. No action is required that would impose any monetary costs or burdens of compliance on any regulated entity. The Commission concludes there will be no economic impact by this rule change on small business entities or consumers. Therefore, since there will be no economic impact of any kind, the Commission certifies that the proposals in document

FCC 11-159, if adopted, will not have any significant economic impact on a substantial number of small entities. Therefore, the question about impact to small entities is moot.

5. The Commission will send a copy of document FCC 11-159, including a copy of the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

ORDERING CLAUSES

Pursuant to the authority contained in sections 4, 5, 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 155, 303, and 613, and §§ 1.115 and 1.411 of the Commission's rules, 47 CFR 1.115, 1.411, FCC 11-159 IS ADOPTED.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 11-159, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 79

Cable television operators, Multichannel video programming distributors (MVPDs), Satellite television service providers, Television broadcasters.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 79 as follows:

PART 79 – CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING

1. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 613

2. Section 79.1 is amended by revising paragraphs (f)(1), (2), (3), (4), (10), and (11) to read as follows:

§ 79.1 Closed captioning of video programming.

(f) Procedures for exemptions based on economic burden. (1) A video programming provider, video programming producer or video programming owner may petition the Commission for a full or partial exemption from the closed captioning requirements. Exemptions may be granted, in whole or in part, for a channel of video programming, a category or type of video programming, an individual video service, a specific video program or a video programming provider upon a finding that the closed captioning requirements will be economically burdensome.

(2) A petition for an exemption must be supported by sufficient evidence to demonstrate that compliance with the requirements to closed caption video programming would be economically burdensome. The term “economically burdensome” means significant difficulty or expense. Factors to be considered when determining whether the requirements for closed captioning are economically burdensome include:

- (i) The nature and cost of the closed captions for the programming;
- (ii) The impact on the operation of the provider or program owner;
- (iii) The financial resources of the provider or program owner; and
- (iv) The type of operations of the provider or program owner.

(3) In addition to these factors, the petition shall describe any other factors the petitioner deems relevant to the Commission’s final determination and any available alternatives that might constitute a reasonable substitute for the closed captioning requirements including, but not limited to, text or graphic display of

the content of the audio portion of the programming. The extent to which the provision of closed captions is economically burdensome shall be evaluated with regard to the individual outlet.

(4) An original and two (2) copies of a petition requesting an exemption based on the economically burdensome standard, and all subsequent pleadings, shall be filed in accordance with § 0.401(a) of this chapter.

(10) The Commission may deny or approve, in whole or in part, a petition for an economically burdensome exemption from the closed captioning requirements.

(11) During the pendency of an economically burdensome determination, the video programming subject to the request for exemption shall be considered exempt from the closed captioning requirements.

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